

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA                     )  
  )  
  ) vs. CAUSE NO. 3:03-CR-83(01) RM  
  )  
ERIC J. JOHNSON                                     )

OPINION and ORDER

Eric Johnson is again before the court seeking reconsideration of the denial, on May 31, 2007, of his motion for reduction of sentence. In denying Mr. Johnson's first motion for reconsideration, the court stated:

To the extent Mr. Johnson seeks reconsideration of the denial of his motion for reduction of sentence under the amendments to the sentencing guidelines, Mr. Johnson's filing of an appeal on that issue deprives this court of jurisdiction to decide his motion. See Boyko v. Anderson, 185 F.3d 672, 674 (7th Cir. 1999) ("The filing of the appeal . . . deprived the district court of jurisdiction over the case. . . . This rule is necessary to prevent one court's stepping on the toes of the other, which would waste judicial time as well as forcing the parties to proceed in two courts in the same case at the same time."); Kusay v. United States, 62 F.3d 192, 193 (7th Cir. 1995) ("The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.").

Sept. 12, 2008 Opinion and Order [docket # 78], at 3-4.

Mr. Johnson says in his current motion that he's asking that his sentence be reduced based on the holdings of Kimbrough v. United States, 128 S. Ct. 558 (2007), and Gall v. United States, 128 S. Ct. 586 (2007), which he claims were not discussed in and have no bearing on his current appeal. Mr. Johnson is mistaken. Mr. Johnson's claim that his sentence should be reduced based on a change in

the law and/or amendments to the United States Sentencing Guidelines relating to the issue of crack vs. powder cocaine is a claim he raised in his January 2008 motion for reduction of sentence, which was denied on March 17 and is pending before the Seventh Circuit Court of Appeals under Cause No. 08-1732.

Mr. Johnson has set forth no ground under Federal Rule of Civil Procedure 60(b) that would allow this court to reconsider the denial of his motion for reduction of sentence. Mr. Johnson's motion for reconsideration [docket # 80] is DENIED.

SO ORDERED.

ENTERED: October 1, 2008

/s/ Robert L. Miller, Jr.  
Chief Judge  
United States District Court